APPENDIX

OVERCOUNT

Although the government disclosed 1033 documents and physical items to the defense in May 2001, we found that number overstated the true number of documents that had not been properly disclosed to the defense. The overcount was caused for a number of reasons:

A. Documents were timely disclosed pretrial

Some documents were not belated at all because they had actually been properly disclosed to the defense before the defendants' trials. Because of the complexities inherent in the database used to track OKBOMB documents and the speed of the search for the documents in the database, some documents were erroneously assumed to have not been disclosed. Subsequent and more thorough investigation revealed that they had been disclosed properly. For example, one of Phoenix's belated inserts had been disclosed timely as had an insert concerning vehicle tag numbers from Sacramento, California. An analysis completed by the prosecutors noted that an insert found in an FBI Headquarters office and disclosed to the defense as part of the second wave of belated documents had in fact been disclosed in 1996 and was inadvertently included in the documents given to the defense in May 2001.[1] We found that at least 14 of the belated documents had been properly disclosed before trial.

B. Duplicates

Twenty-four documents are duplicates and so were counted twice. For example, the same FD-302 was counted as being belated both from Indianapolis and Detroit. Denver had a first wave belated document that is identical to a Denver second wave belated document. A photograph sent from St. Louis to Paris and San Juan was counted as a belated document three times. We show a graphic of this as Example #1 in this Appendix.

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[1] The FBI officials supervising the process of examining the documents told us that if they had more time to analyze the belated documents, they likely would have found others that had in fact been disclosed to the defense in a timely fashion. Given our experience with OKBOMB's database, ZyIndex, we believe that is likely an accurate assessment.